

**AGREEMENT BETWEEN THE STATE OF CALIFORNIA
AND THE BIG LAGOON RANCHERIA FOR THE SETTLEMENT OF LITIGATION,
LOCATION OF A CLASS III GAMING FACILITY AND RESTRICTIONS ON THE
USE OF LANDS CONTIGUOUS TO BIG LAGOON**

A. Description of the Parties and Statement of Purpose

This Agreement is made and entered into by and between the State of California (“State”) and the Big Lagoon Rancheria, a federally recognized Indian tribe (“Tribe”). The purpose of this Agreement is twofold. First, the parties intend to effect a settlement of pending litigation between the Tribe and the State that will lead to their execution of a Tribal-State Class III Gaming Compact (“Compact”) under the terms of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (“IGRA”), and to resolve their dispute regarding the location of a class III gaming facility (“Casino”). Second, in return for the State’s agreement to permit the Tribe to operate a Casino on a site with greater economic potential than the Tribe’s existing trust lands and to ensure that the State receives the benefit of its bargain (elimination of the impact that development of a Casino on the Tribe’s existing trust lands would have on the adjacent environment), the Tribe and the State intend to agree to conditions on future development on the Tribe’s existing trust lands that are contiguous to park and other environmentally sensitive lands held by the State, for the purpose of reconciling land use along the coast for the mutual benefit of the public and the Tribe.

B. Effective Date

The effective date of this Agreement is the date on which it is executed by the parties.

C. Facts Underlying the Agreement

This Agreement is made with reference to the following facts.

1. The Tribe exercises the sovereign authority permitted it by the United States Constitution and federal law within the bounds of two parcels of property located adjacent to Big

Lagoon. One is an approximately nine acre parcel of property ("Parcel A"), title to which is held in the name of the United States of America. A legal description of this property is set forth in the document attached hereto and incorporated by reference herein as Exhibit I. The other is an approximately eleven acre parcel ("Parcel B"), title to which is held by the United States of America in trust for the Big Lagoon Rancheria. A legal description of this property is set forth in the document attached hereto and incorporated by reference herein as Exhibit II. The descriptions contained in Exhibits I and II are for identification purposes only. Nothing contained in Exhibits I or II or this Agreement shall be construed as an admission by the State as to the actual boundaries between Parcel A and State property or Parcel B and State property on the waterward side of such parcels or as to any limitation on any State interests in those parcels. Likewise, nothing herein shall be construed as an admission by the Tribe as to the validity of any claims the State may have as to the waterward boundary lines of Parcel A or Parcel B.

2. A suit is pending between the Tribe and the State in the United States District Court for the Northern District of California ("Court"), entitled *Big Lagoon Rancheria v. State of California*, U.S.D.C. No. C 99-4995 CW ("Case"), in which the Tribe seeks an order compelling the State to execute a class III gaming compact allowing it to build a Casino on Parcel B. The Case is an outgrowth of a dispute stemming from previously unsuccessful compact negotiations between the Tribe and the State.

3. During negotiations following the institution of the Case, the State has suggested various alternative sites for the Tribe's Casino, including a site within the City of Barstow following the State's determination that the City's elected officials supported a gaming facility there.

4. The Tribe represents that it has entered into agreements with BarWest, L.L.C., a Michigan limited liability company (“BarWest”), the Los Coyotes Band of Cahuilla and Cupeno Indians (“Los Coyotes”), and LCB BarWest, L.L.C., a Michigan limited liability company (“LCB”) for the joint development of two compatibly designed class III gaming facilities sharing access, parking and other common amenities on approximately 126.48 acres of land located in the City of Barstow, California (“Casino Site”). The Tribe further represents that BarWest has agreed to convey to the United States of America, in trust for the Tribe, title to approximately 25 acres of land located in Barstow identified as Assessor’s Parcel No. 0428-171-69 (“APN 69”) should, among other things:

- a. the Secretary of the Interior agree to accept APN 69 in trust for the Tribe;
- b. the Secretary of the Interior determine that class III gaming may occur on APN 69 pursuant to the provisions of 25 U.S.C. § 2719(b)(1)(A) upon the concurrence of the Governor of the State of California; and
- c. the Governor of the State of California concur in the Secretary of the Interior’s 25 U.S.C. § 2719(b)(1)(A) determination.

5. In view of the foregoing circumstances and for the purpose of resolving the Case, the parties wish to reach a full and final settlement of all matters, causes of action and claims mentioned in the preceding paragraphs which have been raised, or which could have been raised, now or in the future, and which arise out of the facts underlying the Case. This Agreement is meant to resolve disputed claims and contentions as set forth in the Case, and nothing contained herein shall be construed as an admission of liability by any party, nor of the validity of any claims or contentions which have been made or could be made.

D. Terms of the Agreement

6. The parties to this Agreement, in consideration of the mutual covenants and agreements to be performed, as set forth below, agree as follows:

a. Prior to the State's execution of this Agreement, the Tribe shall adopt a tribal resolution constituting a valid authorization, properly enacted pursuant to the Tribe's constitution and implementing ordinances, giving the Tribe's attorneys the authority to execute this Agreement and the Stipulation for Entry of Judgment attached as Exhibit III to this Agreement and waiving the Tribe's sovereign immunity with respect to enforcement of the terms of this Agreement, which resolution shall be attached as an exhibit to the Stipulation for Entry of Judgment contemplated by this Agreement.

b. Within 60 days of the date this Agreement is executed, the parties shall execute a Compact in the form of the compact that is attached hereto and incorporated by reference herein as Exhibit IV to this Agreement. This Compact shall limit any and all class III gaming operated by the Tribe to APN 69 under the conditions established by this Agreement and the Compact.

c. Prior to the commencement of any "development" as that term is defined in the California Coastal Act, Public Resources Code section 30000 et seq., on that portion of Parcel B on which there currently exists a partially constructed concrete foundation, the Tribe shall, at its expense, remove the partially constructed concrete foundation and related "development" that currently exists on that portion of the property and restore the grade of that portion from which the partially constructed foundation has been removed to an historic grade of that portion of the property which the State and the Tribe agree in writing is consistent with the protection of the water quality of the Big Lagoon ("Agreed Grade"). If

the parties are unable to timely agree upon a grade, the matter shall be resolved by an arbitrator selected by the Court. The Tribe agrees and commits not to change the grade of the concrete foundation portion of Parcel B from the Agreed Grade or to in any way authorize or permit any other individual or entity to change the grade for that portion of Parcel B from the Agreed Grade.

d. The Tribe and the State agree and commit that, except as specifically set forth in this Agreement, no gaming, including class I, class II or class III gaming as defined by IGRA, or other commercial development shall occur on Parcel A or Parcel B. The Tribe and the State further agree that any development permissible under this Agreement with respect to Parcel A or Parcel B:

(i) shall not be located within 15 feet of the boundary of State property or within 100 feet of the 18-foot contour above sea level (National Geodetic Vertical Datum), whichever is furthest;

(ii) shall not exceed 30 feet in height above the current grade of Parcel B, or the Agreed Grade for the concrete foundation portion of Parcel B, for development on Parcel B or 30 feet in height above the current grade of Parcel A for development on Parcel A;

(iii) shall incorporate lighting practices and low wattage systems consistent with non-commercial development designed and utilized in such a way as to minimize to the maximum extent practicable their impact on the nighttime visual environment of the Big Lagoon and the surrounding park and recreational areas, including impacts due to the emission of glare and sky glow;

(iv) shall, to the extent any non-native vegetation is introduced, remove said vegetation should the existence of that non-native vegetation result in a material adverse effect on the surrounding park and recreation area habitat and, in the event of an infestation of the non-native vegetation into the contiguous park and recreation habitat, the Tribe shall pay to the State the reasonable cost of the removal of that non-native vegetation from that habitat; and

(v) shall be designed in such a way as to avoid a material departure from the non-commercial character of the surrounding Big Lagoon area and shall utilize pervious surfaces such as vegetated swales, filtering strips, or an earthen berm landward of the lagoon set-back line identified in (d)(i) above sufficient to capture and "treat" runoff from any impervious surfaces.

e. For the sole purpose of assuring adherence to subparagraphs c and d, upon at least 15 days' written notice to the Tribe, the State may conduct a one-day inspection of Parcels A and B no more than once a calendar year during normal business hours.

f. The term "commercial development" as used herein includes all development with a business or commercial purpose and further includes apartment buildings and non-single family residential development. The term "commercial development" does not include single family residences for the Tribe's housing needs, or tribal governmental offices, a tribal meeting hall and a tribal cultural center, so long as they are not utilized for any commercial purpose.

E. Attorney Fees and Dispute Resolution

7. Except as specifically provided herein, the State and the Tribe shall each bear their own costs and any attorney fees in connection with the negotiation, drafting, and execution of this Agreement. In the event of any litigation regarding the enforcement, interpretation or any other claim arising out of this Agreement, each party shall bear its own court costs and attorney fees.

8. This Agreement is intended to be incorporated by reference into a Stipulation for Entry of Judgment and a judgment entered pursuant thereto in the Case and, except as provided in the Compact, the sole means for enforcement of the provisions of this Agreement shall be by a proceeding in the Court to enforce the stipulated judgment.

9. Within 21 days of the date this Agreement is executed, the parties shall submit this Agreement and said Stipulation for Entry of Judgment (a copy of which is attached hereto and incorporated by reference herein as Exhibit III) and Judgment Pursuant to Stipulation (a copy of which is attached hereto and incorporated by reference herein as Exhibit V) to the Court for its information and to the Secretary of the Interior requesting either approval or a letter indicating that approval is not necessary pursuant to 25 U.S.C. § 81.

10. Within 15 days of the date the Compact is executed or the Secretary of the Interior approves this Agreement and the Stipulation for Entry of Judgment (Exh. III) pursuant to 25 U.S.C. § 81 (or indicates that approval is not necessary), whichever is last, the parties shall execute the Stipulation for Entry of Judgment (Exh. III) and file that stipulation with the Court and submit the Judgment Pursuant to Stipulation (Exh. V) to the Court for signature and entry.

F. Time of Performing Obligations

11. Time is of the essence in this Agreement.

G. Law Governing.

12. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

H. Enforceability

13. In the event that any provision of this Agreement should be held by a final judgment or order of a state or federal court to be void, voidable or unenforceable, the remaining provisions of the Agreement shall not remain in full force and effect unless the State and the Tribe agree in writing thereafter that each of those provisions shall remain in full force and effect.

I. Entire Agreement

14. This Agreement embodies the entire Agreement of the State and the Tribe respecting the subject matter. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This instrument supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. Any modification to this Agreement shall be in writing and signed by both parties and approved by the Court.

J. Advice of Counsel

15. The State and the Tribe, each for itself, on the basis of ample time to investigate, have independently determined that it is in their respective best interests to enter into this Agreement, regardless of whether or not the facts are as they suppose them to be. Each party is represented by counsel with respect to this Agreement and is relying upon the advice of its counsel in entering into this Agreement.

K. Benefit and Binding Effect

16. Each of the persons signing this Agreement represents that he or she has written authority to execute this Agreement on behalf of the entity for which he or she is signing this

Agreement. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns. The Tribal signatory's authority to waive the Tribe's sovereign immunity is set forth in Exhibit C to the Stipulation for Entry of Judgment (Exhibit III to this Agreement). The State has waived its sovereign immunity by virtue of the provisions of Government Code section 98005.

L. Counterparts

17. This Agreement may be executed in counterparts and when so executed by each party shall be deemed an original. This Agreement shall not be effective, and no party shall have any rights or obligations arising out of it, until it has been properly executed by each party.

M. Termination of Obligations Under Paragraph 6

18. The parties' obligations under paragraph 6 and under any judgment entered pursuant to those provisions shall terminate upon the occurrence of any of the following:

a. The Secretary of the Interior, pursuant to 25 U.S.C. § 81, disapproves this Agreement or the Stipulation for Entry of Judgment attached hereto as Exhibit III.

b. The Secretary of the Interior disapproves the Compact, and any administrative or judicial proceeding regarding the disapproval has been concluded, confirming the Secretary's disapproval.

c. The Secretary of the Interior declines to accept APN 69 in trust for the Tribe, or fails to make, with respect to APN 69, the determination set forth in 25 U.S.C. § 2719(b)(1)(A) or to obtain a concurrence in that determination by the Governor of the State of California pursuant to 25 U.S.C. § 2719(b)(1)(A).

d. A final administrative or judicial proceeding determines that APN 69 may not be taken into trust by the United States for the benefit of the Tribe or that APN 69 is not eligible for gaming.

e. The United States of America refuses to execute the instruments necessary to effectuate its acceptance of trust title to APN 69.

f. The Compact is deemed null and void pursuant to the provisions of section 14.2 thereof.

N. Subsequent Negotiations

19. The State and the Tribe agree that should any of the contingencies set forth in paragraph 18 occur, the State and the Tribe will commence new compact negotiations within 30 days of the date either party has been given notice of the occurrence of said contingency by the other party. With respect to any new site that is proposed as an alternative to the Tribe's existing trust lands, the State and the Tribe intend to negotiate the new compact based on the Compact attached as Exhibit IV and agree that if a new compact is not executed between the State and the Tribe within 120 days of the date these compact negotiations commence, notwithstanding the provisions of 25 U.S.C. § 2710(d)(7)(B)(i) the Tribe shall have the right to file suit pursuant to the provisions of 25 U.S.C. § 2710(d)(7)(B)(i) and the State shall have the right to assert any and all defenses it may have to said suit, except that the State hereby waives any right it might have to claim that said suit is premature by virtue of the provisions of 25 U.S.C. § 2710(d)(7)(B)(i).

O. Limitation on Right to Conduct Class III Gaming Should Los Coyotes Be Unable to Operate Class III Gaming

20. If Los Coyotes is unable to operate class III gaming on approximately 23 acres of land in the City of Barstow identified as Assessor's Parcel Nos. 0428-171-66, 0428-171-67, and 0428-

171-68 ("APN 66, 67, 68"), the Tribe will not object to another federally recognized Indian tribe, other than Los Coyotes, operating class III gaming on those parcels. The Tribe expressly agrees that it will not commence operating, or that it will immediately discontinue operating, class III gaming on APN 69 if Los Coyotes is unable to operate class III gaming on APN 66, 67, 68 and if all individuals or entities holding title to APN 66, 67, 68 fail to make, within 30 days of a written request by the State to do so, a valid and binding irrevocable offer to convey title to APN 66, 67, 68 to the United States of America to be held in trust for any federally recognized Indian tribe that has agreed to execute an agreement or agreements with the individuals and entities holding title to APN 66, 67, 68, BarWest and the Tribe that are the equivalent to any and all agreements, entered before December 31, 2005, between Los Coyotes, LCB, the Tribe and BarWest related to the acquisition of APN 66, 67, 68 and the conduct of class III gaming on APN 66, 67, 68, including development, management and related agreements with the individuals or entities holding title to APN 66, 67, 68. To effectuate the terms of this paragraph, if Los Coyotes is unable to operate class III gaming on APN 66, 67, 68, the Tribe must make available all such agreements to the State upon thirty days written request to do so.

P. Notice

21. Attached hereto and incorporated by reference herein as Exhibit VI are the current addresses of the State and the Tribe for purposes of notice pursuant to this Agreement. Any party may change such address by delivery to the other of its new address by certified mail, return receipt requested, or recognized national delivery service (Federal Express, UPS, etc.). The new address shall be binding upon a party only upon actual receipt by the party notified. Proof that notice has

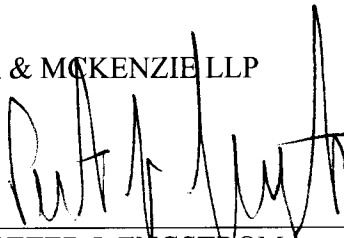
been received for the purposes of this Agreement shall consist of a fully executed return receipt card, certificate or other similar document issued by a recognized national delivery service.

Q. Recordation

22. Within 30 days of the date the Judgment Pursuant to Stipulation is entered, the Agreement shall be recorded with the County Recorder of Humboldt County by the State.

Dated: AUGUST 3, 2005

BAKER & MCKENZIE LLP

By: 
PETER J. ENGSTROM

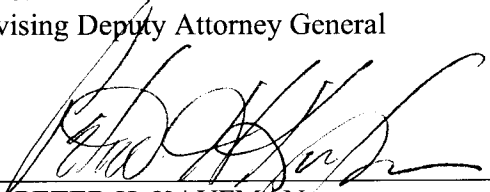
Attorneys for Plaintiff Big Lagoon Rancheria

Dated: AUG 17 2005

BILL LOCKYER,
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By: 
PETER H. KAUFMAN

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